

FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:) WT DOCKET No.: 97-115
MOBILEMEDIA CORPORATION, et al.)
Applicant for Authorizations and)
Licensee of Certain Stations in)
Various Services)

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Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
May 6, 1997

The parties met, pursuant to the notice of the Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of Mobilemedia:

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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
None.

E X H I B I T S

EXHIBITS: IDENTIFIED RECEIVED DESCRIPTION
None.

Hearing Began: 9:00 a.m. Hearing Ended: 10:20 a.m.

P R O C E E D I N G S

JUDGE CHACHKIN: Let's go on the record. By order to show cause, hearing designation order and notice of opportunity for hearing forfeiture, released April 8, 1997 (FCC 97-124). The Commission designated for hearing the pending applications of Mobilemedia Corporation and its various subsidiary and associate organizations.

Mobilemedia was also directed to show cause why its licenses should not be revoked. The specific issues which the Commission designated are in the hearing designation order and I won't repeat them now.

Since that time, the Bureau filed a petition for clarification which the Commission has denied. I have a copy of the order denying it. It was an order released May 5th, 1997.

In addition, there has been filed an emergency motion for special relief and stay of the proceedings which was filed by Mobilemedia which I have denied in my order released May 7th, 1997. Does Mobilemedia have a copy of that order?

MR. PETTIT: Yes, we do, Your Honor.

JUDGE CHACHKIN: Yeah, I know I faxed a copy, but I wasn't sure if you got the completed order.

All right. Let's have the appearances on behalf of the parties. On behalf of Mobilemedia Corporation.

1 MR. PETTIT: Your Honor, on behalf of Mobilemedia,
2 Robert Pettit and with me is Nathaniel Emmons, Richard
3 Gordin next to me, and Nancy Victory, all from Wiley, Rein &
4 Fielding.

5 JUDGE CHACHKIN: All right. And on behalf of the
6 Chief Wireless Bureau.

7 MR. PETTIT: Good morning, Your Honor. Gary
8 Schonman and Anthony Mastando on behalf of the
9 Telecommunications Bureau.

10 JUDGE CHACHKIN: Are there any preliminary matters
11 that the parties want to discuss before we get to my
12 pre-hearing order?

13 MR. PETTIT: Your Honor, we might raise a couple
14 of things. We were not aware of the denial of the Bureau's
15 motion. It is our intention, which we've informed the
16 Bureau, to file a motion to delete that issue.

17 JUDGE CHACHKIN: Well, the Commission not only
18 denied the Bureau's motion, but they also denied your
19 request for extension of time. I'll be happy to show you a
20 copy of it.

21 MR. PETTIT: That's fine. As I understand the
22 Commission rules, we have 15 days to file a motion to
23 actually delete the issue from publication in the Federal
24 Register.

25 JUDGE CHACHKIN: You certainly do. But I would

1 suggest that after reading this order, you may find it not
2 necessary to do so or not worthwhile, but that's up to you,
3 of course.

4 MR. PETTIT: Thank you, Your Honor. Secondly, it
5 is our intention to request permission to appeal Your
6 Honor's order of yesterday. I'm sure that's not a surprise,
7 which we intend to do so.

8 JUDGE CHACHKIN: Well, you certainly can do that,
9 but until the Commission reversed me, I intend to go forth
10 with the proceeding.

11 MR. PETTIT: Well, we understand that, Your Honor.
12 We fully are prepared to do that.

13 JUDGE CHACHKIN: All right.

14 MR. PETTIT: I don't know if you would orally like
15 to give us permission to do that today.

16 JUDGE CHACHKIN: I don't think it's a question of
17 my giving you permission. This is not an interlocutory
18 matter. So I am not going to give you permission. But if
19 you want to file an appeal, go ahead and do so.

20 MR. PETTIT: Thank you, Your Honor.

21 JUDGE CHACHKIN: But not with my permission.

22 MR. PETTIT: I understand.

23 JUDGE CHACHKIN: I just want to make it clear.

24 MR. PETTIT: Thank you, sir.

25 MR. GORDIN: Your Honor, may I inquire?

1 JUDGE CHACHKIN: Yes.

2 MR. GORDIN: Are you suggesting that your
3 permission is not needed because you don't believe it's an
4 interlocutory appeal and therefore you're not ruling on the
5 issue of whether you would certify it for appeal or an
6 interlocutory appeal?

7 JUDGE CHACHKIN: Well, what I'm saying is it's not
8 something that I feel has to be certified because I don't
9 think it involves novel questions of law. So I don't think
10 it justifies certification. And whether it's an
11 interlocutory appeal, I have not really given any thought to
12 whether it is or not. But if it is, then I'm not prepared
13 to give permission to appeal. I don't think -- well, I
14 haven't demonstrated there's any justification at this
15 point. I thought my order made clear that I didn't think
16 the second Thursday was appropriate and I have not been
17 convinced otherwise. Anything else?

18 MR. GORDIN: No, sir.

19 JUDGE CHACHKIN: Does the Bureau have anything?

20 MR. SCHONMAN: No, sir.

21 JUDGE CHACHKIN: Well, then let's get to the order
22 prior to prehearing conference. I directed the parties to
23 confer for the purpose of exploring procedures for
24 expediting the conduct of the hearing, including the
25 emission of facts, genuineness of documents, and stipulation

1 of facts. Have the parties gotten together for that
2 purpose?

3 MR. SCHONMAN: Yes, the parties have conferred.

4 JUDGE CHACHKIN: And what is the result?

5 MR. SCHONMAN: We discussed a number of items
6 involving discovery, depositions of witnesses. We discussed
7 requests for documents and the Bureau's intention to file a
8 request for admission of facts and genuineness of documents.

9 JUDGE CHACHKIN: Mr. Pettit, do you have
10 any -- Mr. Gordin.

11 MR. GORDIN: Yes, Your Honor. The conference
12 occurred on April 29. At that time, we were informed that
13 the Commission would be seeking interrogatories from us in
14 spite of, as the Commission acknowledges, in spite of your
15 order.

16 And the Commission was -- the Bureau rather was
17 not able at that time to state any particular persons that
18 they wanted to depose, simply that they expected that they
19 would want to depose persons so that we couldn't work out a
20 schedule.

21 We indicated that we were requesting documents
22 pursuant to Your Honor's order. The Commission's response
23 was, and these documents included depositions, transcripts
24 of depositions which we were not in attendance. And we
25 would need some of those documents to make final

1 determinations as to whether there was any need to depose
2 anybody from our point of view.

3 Now, w were told that we would not be receiving
4 any documents because we would have to go through FOIA. And
5 so we, pursuant to Your Honor's order, we did put in a
6 written request for documents and that issue can be
7 addressed as Your Honor suggested in Your Honor's order.

8 Today we have not received -- we have received
9 some written questions in the form of a letter,
10 interrogatories in the form of a letter from the
11 Bureau -- or we're told interrogatories have been sent to
12 us. We have not received them. We've not received any
13 request for documents from the Bureau and we have not
14 received any names of any individuals or any number of
15 individuals that the Bureau may want to propose.

16 So our position is that we complied with Your
17 Honor's order. We believe for various reasons which I'll be
18 happy to address that we have a right to documents and to
19 choose deponents from those documents. And there is no
20 right, nor should there be for interrogatories in this
21 proceeding at this point in time.

22 JUDGE CHACHKIN: Well, I've gotten a copy of the
23 interrogatories that the Bureau wants and they're very
24 limited. And basically, there are three. And all they want
25 is identify all Mobilemedia's corporate offices since

1 October 1st, 1993, all Mobilemedia senior management,
2 including senior executive staff since October 1st, 1993,
3 and all persons who prior to August 19, 1996 have had
4 knowledge or information relating to the filing of the
5 decision to file FCC forms 489 containing inaccurate
6 information by Mobilemedia between October 1st, 1993 and the
7 present. That's the interrogatories.

8 MR. GORDIN: Yes, Your Honor. Those were the same
9 interrogatories that were posed to us in the form of
10 letter. But they're I think not as simple as they appear
11 based on the Bureau's explanation to us of what they mean by
12 those inquiries.

13 As I understand for inquiries one and two, what
14 they want is not only identifying the names but tracking
15 down where all the people are today. I suspect it's fairly
16 easy for number one. I suspect when you talk about senior
17 managers and a large company that's had a lot of flux it's
18 more difficult, particularly given the abbreviated nature of
19 this proceeding how important it is and the amount of
20 discovery that we've allowed the Bureau before this action
21 was brought. In fact, we provided everything the Bureau
22 ever asked for.

23 After the last request, the Bureau's informed us
24 they're talking about more than employees. They want to
25 know, they want us to track down if an employee's gone home

1 and talked to his spouse or friend about it. So I view this
2 as basically deputizing us to do a full investigation for
3 them at a time when Your Honor's order basically preparation
4 of materials for trial. It's also in violation of Your
5 Honor's order.

6 JUDGE CHACHKIN: Well, let's find out from the
7 Bureau what they have in mind with respect to these three,
8 whether they're as simple or complex as you say they are.

9 MR. GORDIN: Yes, Your Honor.

10 JUDGE CHACHKIN: Go ahead, Mr. Schonman. Let's
11 take each one.

12 MR. SCHONMAN: Your Honor, counsel has already
13 represented that providing information in response to
14 interrogatory number one would not be too burdensome. So I
15 don't believe I have to address that one.

16 MR. GORDIN: Well, I guess I've interpreted my
17 understanding of what you mean by the word identify. I'd
18 like if you would in terms of burdensome, for you to be
19 clear as to precisely what information you're seeking by
20 that term.

21 MR. SCHONMAN: By the word identify?

22 MR. GORDIN: Mm-hmm.

23 MR. SCHONMAN: The word identify we've included in
24 our definitions in the motion that we filed yesterday. Your
25 Honor, as I understand it, counsel for Mobilemedia has not

1 received a copy yet of our filing yesterday.

2 JUDGE CHACHKIN: Well, what they've asked for is
3 the less known business and residence addresses and
4 telephone numbers, title or position that dates the service
5 to Mobilemedia. So they're not really asking you to go out
6 and investigate where they currently live or where they
7 currently work, but what your records indicate is a last
8 known address and business, phone number.

9 MR. GORDIN: Yes, Your Honor.

10 JUDGE CHACHKIN: Which I don't think is that
11 difficult to do. I mean, you obviously have the records and
12 you're not required to go out and conduct a search of where
13 they currently are but just what your own records show.

14 MR. GORDIN: Well, if Your Honor wishes --

15 JUDGE CHACHKIN: I mean, that's how they defined
16 it.

17 MR. GORDIN: I believe if this were the subject of
18 the order, that would not be -- I would not be arguing that
19 that is burdensome, Your Honor.

20 JUDGE CHACHKIN: All right. Then what is the
21 second?

22 MR. SCHONMAN: The second item, identify all of m
23 senior management including senior executive staff since
24 October 1, 1993. And as counsel has represented, they've
25 given us a lot of information. That is Mobilemedia has

1 given the Bureau considerable amount of information. Based
2 on that, I would assume that it would not be too burdensome
3 merely to go through the company's files and give us the
4 identities of who the company's senior management has been.
5 That should be readily available for any company.

6 MR. PETTIT: Again, is that a defined term in your
7 request, senior management?

8 MR. SCHONMAN: An executive --

9 JUDGE CHACHKIN: What do you mean by senior
10 management? How do you define senior management?

11 MR. SCHONMAN: We would leave that up to
12 Mobilemedia. We would give them that discretion.

13 MR. GORDIN: Your Honor, if I may speak on that.
14 This is a large company. As we've indicated in the papers
15 that we submitted to the Bureau, there's been a lot of
16 turnover, acquisitions. This is a largely undefined term.
17 If I may just take a moment, Your Honor, I'm not sure how
18 much background Your Honor has in this matter, but if I may
19 take a moment to explain this because I think it will shed
20 light on these requests.

21 This matter began by David Bayer who was the
22 acting CEO of Mobilemedia when on August 19th he learned for
23 the first time about these false filings or these form 489s.
24 I'm not aware of any evidence in the record that there's no
25 testimony, no documents saying that Mr. Bayer or any outside

1 director knew of any of these happenings before August 19th.

2 Mr. Bayer to his credit, and I say this as a
3 former federal prosecutor and I've seen a lot of people who
4 become whistleblowers rather belatedly, immediately blew the
5 whistle on this, immediately brought in outside counsel, a
6 very large and respected firm, Lathan, Marcum, and then
7 brought Wiley, Rein & Fielding in to do an internal
8 investigation, promptly informed the FCC of the facts that
9 were -- the general nature of what was then known and told
10 the FCC that we were doing an internal investigation report
11 to that.

12 On October 15, the first report was filed which is
13 this document here having names, documents and numbers of
14 false filings, numbers of the related incorrect 40 mile
15 filings. And indicating that we would be further getting
16 back to them. At the same time, we made available to the
17 Bureau all documents they wanted, all witnesses they wanted.
18 We didn't interfere with depositions. We never said we
19 weren't going to produce documents.

20 In fact, to certain areas, we even produced
21 privileged documents. We turned over memos that we had
22 gotten in part of our investigation or witness statements
23 that we've done to the Bureau. We fully cooperated with
24 them.

25 We don't believe that there's a basis for this

1 proceeding. We believe that that's what you'll see as we go
2 forward, that the people now in charge have fully
3 cooperated, have more than acknowledged wrong doing, have
4 stated they won't tolerate wrong doing, have brought in a
5 person to setup the compliance program, have fired those
6 people who have knowledge and made the decisions to do this
7 or the people who are still there. Some people have already
8 left for other reasons.

9 And is now in a situation in which because of all
10 of this is struggling in its current situation and has
11 creditors, has shareholders, has the dominant company in the
12 industry that is now very actively, aggressively going after
13 our customers and it's hurting every day.

14 I don't think this is a time for a fishing
15 expedition. There is no question if you read even the
16 Commission's hearing designation order, which I suspect the
17 Bureau had a role in drafting, if you look at all the
18 material that we provided that they have all this
19 information.

20 At this point in time to send us back to figure
21 out who the managers are, where they came from, do I have to
22 go back to Mobilecom and some of the companies that we
23 acquired. I mean, they have all this information. We only
24 have so many people to work on this and so much time to put
25 things together, to put our case together. We haven't even

1 seen their case. Some of their depositions were in secret.

2 Your Honor entered an order that said no
3 interrogatories. And I think that this becomes -- this is
4 not the time for discovery. If there's no case, it's wrong
5 to put the company through this. And I believe that this
6 interrogatory is so broad based that even in the discovery
7 phase we would be talking about narrowing it. But we're not
8 in discovery. We're just a few weeks away from one final
9 submissions have to be in for the trial. And I don't
10 believe this is fair.

11 MR. SCHONMAN: Your Honor, if I could respond. I
12 think it's preposterous for counsel to suggest that now is
13 not the time for discovery. That's exactly what we're
14 sitting here for. We've asked for three interrogatories.
15 They are each of them directly related to the issues
16 specified in this hearing designation order. They are very
17 narrowly tailored and they're designed to accommodate the
18 Commission in its quest to resolve this proceeding on an
19 expedited schedule. Without responses to these
20 interrogatories, without the identification of these people,
21 what we're compelled to do is conduct a wide ranging
22 deposition schedule and that would constitute a fishing
23 expedition. What we'd like to do is have the identity of
24 people who have knowledge and information about the alleged
25 misconduct and from that pool of people we will interview

1 them as the case may be or depose them as the case may be or
2 perhaps do nothing.

3 JUDGE CHACHKIN: Well, first of all, I think it's
4 your obligation to identify what you mean by senior
5 management. I don't think it's appropriate for you to want
6 the Mobilemedia to tell you what they mean by senior
7 management.

8 MR. SCHONMAN: Very well, Your Honor. In the two
9 inch thick report that counsel handed up a moment ago that
10 the company submitted to the Bureau last year, there's a
11 reference to low level employees. We're looking for
12 individuals who are not low level employees.

13 So counsel has defined --

14 JUDGE CHACHKIN: That still doesn't -- you have to
15 give titles or positions, something. You can't, it's not
16 fair to leave it to them to decide what is and later on say
17 that they haven't given you the names of all the senior
18 management. You have to, on the basis of the information
19 you now have ask them to provide you, give them titles or
20 some identification.

21 MR. SCHONMAN: Well, Your Honor, we don't have
22 information about the organization of the company, how they
23 define senior management. If you're suggesting that we
24 should ask for everyone who has the title director --

25 JUDGE CHACHKIN: All right. If that's what you

1 want to ask --

2 MR. SCHONMAN: Anyone who has the word director in
3 their title or someone who is regarded as management, we
4 would want to know the identity of all those people.

5 MR. PETTIT: Your Honor, we submitted last October
6 I guess a chart showing an organizational chart for this
7 company. This information has been in the Bureau's hands
8 for some months now. I mean, if those are the people you
9 want us to look at, then that becomes a definition.

10 MS. VICTORY: And their names are already included
11 in there.

12 MR. PETTIT: Your Honor, if I may say one other
13 thing. I frankly particularly with regard to the third
14 request don't know how we would go about now -- I don't know
15 if the obligation is the intended obligation is to inquire
16 of each employee whether -- there are I think something in
17 the nature of 4,000 employees, whether they knew something
18 about this, whether their spouses knew something about it,
19 whether their friends knew something about it. It's an
20 enormous burden.

21 JUDGE CHACHKIN: Well, I don't think it's your
22 obligation either frankly. I think it's the Bureau's
23 obligation to determine who had information and who didn't
24 have information. Now, to the extent that Mobilemedia has
25 conducted an investigation, you have the results.

1 Now, I don't understand as far as question three,
2 are you asking them to go out and conduct a further
3 investigation and provide you the information?

4 MR. SCHONMAN: We're asking for a comprehensive
5 list of people who have information and knowledge about the
6 alleged misconduct. And that seems basic to the designated
7 issues.

8 JUDGE CHACHKIN: I understand that, but they
9 provided you a report which I assume -- I assume they
10 provided you all the information they have concerning the
11 misconduct. Am I right? Is there anything that's been
12 withheld from the Bureau?

13 MR. GORDIN: No, Your Honor.

14 JUDGE CHACHKIN: I mean, has there been any
15 further investigations conducted since that time?

16 MR. GORDIN: Your Honor, when this occurred, there
17 were at least I know of eight depositions which were very
18 thorough, were not terminated. There were, as far as I
19 know, no substantive objections, no areas that were
20 forbidden from inquiry. All documents were made available.
21 There was another submission two weeks after this that dealt
22 more with some legal issues. There was another submission
23 the beginning of January asking for -- that was also roughly
24 this thick that responded to specific followup questions
25 they had.

1 I've been assuming all along that my knowledge of
2 this case and why there is no case here, I mean, we clearly
3 did something wrong and we more than acknowledge that. We
4 came forward and said it's wrong. We said it's intolerable.
5 But in terms of any present deception by people, I don't
6 know of anything. That's my point. I don't think we should
7 be here. We are here.

8 JUDGE CHACHKIN: Well, you're missing the whole
9 point of what the Commission said in their designation
10 order.

11 MR. GORDIN: I understand.

12 JUDGE CHACHKIN: They said they can't take any
13 action against the Mobilemedia unless they afford them a
14 hearing. Now, Mobilemedia has a choice, of course, of
15 saying they waive a hearing. If they don't waive a hearing,
16 legally the Commission can do nothing until they hold a
17 hearing and afford you an opportunity. Also mitigation --

18 MR. GORDIN: Yes, Your Honor.

19 JUDGE CHACHKIN: -- can afford you an opportunity.
20 So we have to have a hearing.

21 MR. GORDIN: I'm sorry --

22 JUDGE CHACHKIN: Unless you waive a hearing.

23 MR. GORDIN: We do not and perhaps I misspoke. My
24 point is that I'm not, as far as I'm aware, Your Honor,
25 Mobilemedia has given, made available to the Bureau whatever

1 facts we have. And I don't, there are no surprises that I'm
2 aware of that would come forth right now. If we started the
3 hearing today, I would expect that both of us would know
4 exactly what every witness would say.

5 JUDGE CHACKIN: Now, there's one other aspect the
6 Commission has raised and that's the credibility of the
7 report itself. That's a separate issue. I don't know if
8 the Bureau's addressed that. They haven't addressed it in
9 these interrogatories. But we have a situation here where
10 Mobilemedia says they've given you everything. They've
11 conducted all the -- all the reports of all the
12 investigations they've given you. So what do you want them
13 to do now? Go out and conduct a further investigation? Or
14 just what do you have in mind, Mr. Schonman?

15 MR. SCHONMAN: Your Honor, Mobilemedia has given
16 the Bureau considerable information. Now, Your Honor hasn't
17 seen the copy of that two inch thick report that counsel
18 handed up a moment ago. But it's on that basis of that
19 report that counsel maintains that we've been given all the
20 information that we need which would be responsive to these
21 interrogatories. That report is written in the abstract.
22 It doesn't name people in the narrative report.

23 In fact, the issue pertaining to the candor of
24 that report arises because there are no names mentioned in
25 the narrative portion of that report. We're trying to get

1 the names of people so that we can depose and speak with
2 them and find out what they knew. We want to know how high
3 the wrongdoing went in this company. For counsel to sit
4 here and say essentially they're pleading, they're seeking
5 reconsideration of the hearing designation order --

6 JUDGE CHACHKIN: It's not that at all. As I
7 gather, they have -- question three asks them for knowledge
8 of information relating to the -- identify all persons who
9 have knowledge or information relating to the filing or the
10 decision.

11 MR. SCHONMAN: We don't have that information.

12 JUDGE CHACHKIN: As I understand they don't have
13 any further information other than what they furnished you.
14 Now, is it your intention that they go out and conduct a
15 further information to find out who all these people are or
16 just what? You have the burden?

17 MR. SCHONMAN: We also have an obligation to
18 engage in discovery.

19 JUDGE CHACHKIN: I understand. No one's
20 preventing you from doing so.

21 MR. PETTIT: Your Honor, if I may.

22 JUDGE CHACHKIN: But they don't have an obligation
23 to go out and conduct an investigation to furnish you the
24 information so then you can engage in discovery. That's
25 your obligation.

1 MR. SCHONMAN: Your Honor, this is a routine
2 interrogatory which relates directly to the designated
3 issues. We want to bring in witnesses here who can provide
4 Your Honor with information so that you can prepare your
5 report for the Commission as the HDO directed you to do.

6 We're looking for the identities of these people.
7 That report does not reveal the identities of the people.
8 It's written in the abstract.

9 MR. PETTIT: Your Honor, if I may.

10 JUDGE CHACHKIN: Go ahead.

11 MR. PETTIT: This report has attached to it as
12 attachment two and I direct counsel to this. It's employees
13 interviewed during the course of the internal investigation
14 which was everybody that the investigators talked to.

15 I don't think, at least to my knowledge, the
16 Bureau has not talked to all these people. They conducted I
17 think interrogatories, I'm sorry, depositions of certainly
18 the directors and other personnel of the company that could
19 have identified, and I think probably did identify.

20 Certainly most of the people as you say listed by
21 title or not otherwise identified in the report. This has
22 gone on for I don't know, ten months, eight months, whatever
23 it's been since October.

24 MR. GORDIN: Your Honor, in addition, we provided
25 probably two feet worth of documents. Every document that

1 they've asked for we've responded to by producing what we
2 had. They have identifying information. We've had
3 conversations with the Bureau. It is clearly not just
4 relying on this report.

5 I could hand you, I mean, this representation, let
6 me say I could hand you the deposition transcripts we have
7 them replete with names and specific discussions of just
8 what happened when, who said what, in detail.

9 So we've never represented this is the totality of
10 what we've told the Bureau and in fact it's not. In fact,
11 quite the opposite. For months we've been providing
12 information. We've given them what we know. We've given
13 them the information. We've given them our report. We've
14 made the witnesses available. We've made -- I don't know
15 what more they want. They want carte blanche. Carte
16 blanche.

17 MR. SCHONMAN: May I respond, Your Honor?

18 JUDGE CHACHKIN: Yes.

19 MR. SCHONMAN: The names that Mr. Pettit just
20 referenced in that report as he stated just a moment ago are
21 people who counsel opted to interview in preparation of that
22 report. Those are the people that the counsel selected to
23 interview. What we're trying to find out here very simply
24 are the universe of people who have information and
25 knowledge. There may be people out there who counsel for